CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	$\overline{\mathbf{Q}}$	Force		Discourt.	U.S.
Eric Rigie		Squad #3	201600158	V	Abuse		O.L.	Injury
Incident Date(s)		Location of Incident:	<u> </u>	F	Precinct:	18	Mo. SOL	EO SOL
Saturday, 01/02/2016 4:40 PM		71 Maple Parkway			121	7	//2/2017	7/2/2017
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	Rece	eived at CCl	RB
Sat, 01/02/2016 8:09 PM		IAB	Phone		Fri, 01/08/	2016	11:05 AM	
Complainant/Victim	Туре	Home Addre	ess					
Witness(es)		Home Addre	ess					
Subject Officer(s)	Shield	TaxID	Command					
1. DT3 Mathew Reich	00122	933211	NARCBSI					
2. DT3 Philip Vaccarino	4885	943905	NARCBSI					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. SGT Paul Farella	02557	926935	NARCBSI					
2. DT3 Michael Fahmy	01434	936561	NARCBSI					
Officer(s)	Allegatio	on			Inve	stiga	tor Recon	nmendation
A.DT3 Philip Vaccarino	Abuse: D § 87(2)(b)	et. Philip Vaccarino sto was an occupant.		vhi	ch			
B.DT3 Mathew Reich	Abuse: Det. Mathew Reich stopped the vehicle in which was an occupant.							
C.DT3 Philip Vaccarino	Force: Det. Philip Vaccarino used physical force against \$87(2)(b)							
D.DT3 Mathew Reich	Force: Det. Mathew Reich used physical force against \$87(2)(b)							
E.DT3 Philip Vaccarino	Abuse: Det. Philip Vaccarino interfered with series use of a recording device.							
F.DT3 Mathew Reich	Abuse: Det. Mathew Reich interfered with § 87(2)(b) use of a recording device.							
G.DT3 Philip Vaccarino	Abuse: Det. Philip Vaccarino searched the vehicle in which was an occupant.							
H.DT3 Mathew Reich	Abuse: Det. Mathew Reich searched the vehicle in which was an occupant.							

Case Summary

On January 2, 2016, Sgt. Paul Farella of the Narcotic Bureau of Staten Island reported to IAB that was injured in police custody. This case was received by the CCRB on January 8, 2016 via IAB log# 2016-0431.

On January 2, 2016, at approximately 4:40 p.m., Det. Philip Vaccarino and Det. Mathew Reich, of the Narcotics Bureau of Staten Island, observed §87(2)(b) engage in an alleged hand to hand exchange from her vehicle with an unknown male in front of 109 Van Pelt Avenue in Staten Island. Following this alleged exchange, Det. Vaccarino and Det. Reich followed \$87(2)(b) their unmarked vehicle and pulled her over in front of 71 Maple Parkway in Staten Island (Allegations A and B). Det. Vaccarino approached §87(2)(b) driver's side while Det. Reich approached her passenger side. §87(2)(b) reached into her purse, and Det. Vaccarino responded by ordering \$87(2)(b) out of her vehicle and opening her door. \$87(2)(b) failed to comply and instead grabbed her phone and told Det. Vaccarino that she was going to record the incident. Det. Vaccarino responded by grabbing her left arm and pulling it behind her back while Det. Reich allegedly entered \$87(2)(b) passenger side, grabbed \$87(2)(b) right arm, and took her phone (Allegations C, \overline{D} , \overline{E} , and \overline{F}). Det. Reich then ran around \$87(2)(6) vehicle to her driver's side. Det. Vaccarino and Det. Reich collectively pulled \$87(2)(b) arms behind her back and handcuffed her, causing her to sustain a sprain to her right wrist (also Allegations C and D). was then removed from her vehicle and escorted by Det. Vaccarino and Det. Reich to a point behind her vehicle. While \$87(2)(b) waited in handcuffs, Det. Vaccarino and Det. Reich allegedly searched the front seat, back seat, and trunk area of § 37(2) vehicle (Allegations E and F). During this search, Det. Vaccarino found an opened bottle of Absolute Vodka that was allegedly a quarter full, but no other weapons or contraband. Shortly after this search, Sgt. Farella and Det. Michael Fahmy, also of the Narcotics Bureau of Staten Island, arrived on the scene in a separate unmarked vehicle. Sgt. Farella instructed Det. Vaccarino and Det. Reich to issue a C-summons#\\$87(2)(b) for \\$87(2)(b) open container. \\$87(2)(b) was then released and the officers left the scene.

Approximately five minutes after leaving the scene, Det. Vaccarino and Det. Reich briefly returned to the scene to give \$87(2)(b) her car keys, which Det. Reich mistakenly took when he left.

At 5:18 p.m., an unknown male motorist (Male# 1) and a second unknown male bystander (Male# 2) called 911 to report that they observed a female being assaulted at the same location. Unknown officers from the 121 Precinct and EMS responded to the scene. Sgt. Farella and Det. Fahmy also returned to the scene. Sgt. Farella interviewed \$87(2)(0) who complained that Det. Vaccarino and Det. Reich injured her wrist and back during the incident. \$87(2)(0) was transported to Richmond Medical Center (RUMC) in Staten Island, where she was diagnosed with a sprained wrist and back pain. Sgt. Farella and Det. Fahmy followed \$87(2)(0) to RUMC where Sgt. Farella notified IAB of \$87(2)(0) injuries.

There was no video footage of this incident.

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Mediation, Civil and Criminal Histories

•	Mediation was deemed unsuitable for this case, because \$87(2)(b) attorney, \$87(2)(b) said that \$87(2)(b) was considering a lawsuit.
•	On March 16, 2016, a FOIL Registration was submitted to the Office of the Comptroller for any notices of claim filed by \$87(2)(b) for this incident. The results will be added to the case file upon receipt (01 Board Review).
•	\$ 87(2)(b)
	Civilian and Officer CCRB Histories
•	This is \$87(2)(b) first CCRB complaint (03 Board Review). Det. Vaccarino has been a member of the NYPD for nine years and has 13 other CCRB cases, involving 30 allegations including three substantiated allegations for a vehicle stop, a vehicle search, and a frisk. In addition to the substantiated allegations, Det. Vaccarino has two unsubstantiated allegations for vehicle searches.
•	Det. Reich has been a member of the NYPD for 12 years and has 26 other CCRB cases involving 71 allegations, including six substantiated allegations for a stop, a refusal to provide his name and shield number, a frisk, physical force, a vehicle stop, and a refusal to obtain medical treatment. Among the allegations not substantiated, Det. Reich has 10 vehicle search allegations, of which, seven were unsubstantiated, two were exonerated, and one is under active investigation. Det. Reich also has five vehicle stop allegations, of which one was unsubstantiated, three were exonerated, and one is under active investigation. §87(2)(9)
	Potential Issues
•	The anonymous 911 caller did not wish to provide his name or provide a verified statement to the investigation. The second anonymous 911 caller was unavailable.
•	\$ 87(2)(b)
	Findings and Recommendations
§ 87(2)(b) Allega	tion A –Abuse of Authority: Det. Philip Vaccarino stopped the vehicle in which was an occupant. tion B –Abuse of Authority: Det. Mathew Reich stopped the vehicle in which same an occupant.
§ 87(2)(b) visit he	said that she was driving down Maple Parkway toward Forest Avenue on the way to er daughter when an unmarked, black, four door sedan with New Jersey plates pulled

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behind her. \$87(2)(b) heard a siren chirping sound, but observed no emergency lights. On hearing the siren chirp, \$87(2)(b) pulled over to the side of the road (04 Board Review).

Det. Vaccarino said that prior to stopping \$87(2)(b) he observed her white SUV parked in front of 109 Van Pelt Avenue in Staten Island. Det. Vaccarino described the area immediately in front of 109 and 111 Van Pelt Avenue and also the alley between the two addresses as a location known for narcotics sales. Det. Vaccarino's team made approximately 10 narcotics arrests in the month prior to this incident in which marijuana, heroin, crack, and pills were confiscated by narcotics officers. As Det. Vaccarino and Det. Reich watched, a male suspected of being a drug dealer approached \$37(2) driver's side door. This male, who Det. Vaccarino could not name, handed \$87(2)(b) an unknown amount of US Currency. In exchange for this money, \$87(2)(b) handed the male a small object approximately the size of a smart phone, but thicker and wrapped up in a black plastic shopping bag. Based on his training and experience as a narcotics officer, Det. Vaccarino identified the size and shape of this object as being consistent with narcotics. Det. Vaccarino made this observation from the driver's seat of his vehicle, which was parked at an angle where he could clearly see through \$87(2)(b) passenger side window and part of her windshield. The exchange took approximately 30 seconds after which, the male ran down the alley between the two addresses and \$87(2)(b) drove away. Det. Vaccarino and Det. Reich followed § 87(2)(b) in their vehicle and stopped her in front of 71 Maple Parkway for the purpose of questioning her about the exchange they observed (05 Board Review).

Det. Reich confirmed that he first observed \$\frac{87(2)(0)}{27(2)(0)}\$ in front of 109 Van Pelt Avenue, a known drug prone location, and that he observed engage in a hand to hand exchange with a black male who was the target of an active narcotics investigation. Det. Reich added that this exchange was made from approximately four to five lengths away in daylight. However, Det. Reich described the object, which \$\frac{87(2)(0)}{2}\$ handed the male in exchange for currency, as being a softball sized object wrapped in a white plastic shopping bag that did not appear large enough to contain food. Det. Reich also confirmed that the male ran down the alley between the addresses after the exchange and \$\frac{87(2)(0)}{2}\$ drove away. The detectives followed \$\frac{87(2)(0)}{2}\$ in their unmarked vehicle and stopped her in front of 71 Maple Parkway using their lights and siren. During the stop, Det. Vaccarino explained to \$\frac{87(2)(0)}{2}\$ explained this exchanged by saying that she was dropping food off for an unnamed male friend to have for breakfast (06 Board Review).

Sgt. Farella and Det. Fahmy stated that upon their arrival to the scene, Det. Vaccarino and Det. Reich said they had stopped strong after observing her engage in a drug transaction outside of a known drug location. Sgt. Farella questioned strong about this exchange, who explained to him that she had handed the unknown male food in exchange for money. Det. Fahmy was extremely familiar with 109 Van Pelt Avenue as he had an ongoing narcotics investigation and a pending search warrant for the location (07 and 08 Board Review).

<u>People v. Robinson</u> says that officers can stop vehicles when there is a reasonable suspicion that the driver has committed a crime (<u>People v. Robinson</u> 1026 A.D. 4d. (4th Dept. 2014)) (09 Board Review).

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<u>People v. Wilson</u> says that officers have reasonable suspicion to stop § 87(2)(b) who they
observe exchange an object which they reasonably believe to be narcotics based on their training
and experience (People v. Wilson 9606, 2301/08 A.D. 1d. (1st Dept. 2013)) (18 Board Review).
and experience (<u>reopie vi vi ison</u> 2000, 2001, 00 1112. Tai (1 20pt 2010)) (10 20tta 10 view).
§ 87(2)(b), § 87(2)(g)
§ δ1(2)(b), § δ1(2)(g)
d.
Allegation C – Force: Det. Philip Vaccarino used physical force against §87(2)(b)
Allegation D –Force: Det. Mathew Reich used physical force against §87(2)(6)
Allegation E –Abuse of authority: Det. Philip Vaccarino interfered with \$87(2)(6)
of a recording device.
Allegation F – Abuse of Authority: Det. Mathew Reich interfered with § 87(2)(b) use of
a recording device.
said that Det. Vaccarino approached her driver's side and asked for her license and
registration. At the same time, Det. Reich approached her passenger side. On hearing this request,
complied, by reaching her right hand into her purse, which was on top of the center
console. While looking in her purse for the requested paperwork, \$87(2)(b) asked Det.
Vaccarino why she was pulled over. Det. Vaccarino responded only by asking for her license and
registration again. While \$87(2)(b) still had her right hand inside her purse, Det. Vaccarino
opened her door, grabbed her left arm and pulled it behind her back. §87(2)(6) responded by
asking Det. Vaccarino why he opened her door. Det. Vaccarino ordered \$87(2)(5) to get out of
failed to comply and asked Det. Vaccarino why he was inside her car. Det.
Vaccarino ordered \$87(2)(6) out of her car again, but she failed to comply and said that she was
going to call the police. Det. Vaccarino responded that he was the police. §87(2)(b) responded
by saying that she was going to record Det. Vaccarino and grabbed her cell phone, which was
also on top of the center console. When \$87(2)(b) grabbed her phone, Det. Reich opened her
passenger side door and fully entered her passenger seat. Det. Vaccarino then grabbed §87(2)(b)
right wrist and removed her cell phone from her hand while Det. Vaccarino twisted her arm
further behind her back. Det. Reich then ran around \$87(2)(0) car to her driver's door and helped
Det. Vaccarino pull \$87(2)(6) halfway out of her car so that her face was against the driver's
seat. One of the detectives then handcuffed \$87(2)(b) who was then physically escorted behind
her vehicle. §87(2)(b) said that she never physically resisted Det. Vaccarino or Det. Reich or
made any attempt to struggle. However, she admitted that she did not immediately exit her

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vehicle when ordered because she was nervous. sustained a sprained wrist, back, and shoulder pain (04 Board Review).

Upon reviewing the first 911 call made by Male# 1, the caller said that while he drove by the scene, he observed being pulled from her SUV and pushed to the ground by three light skinned males. The three males then ran back to their unmarked black Chevy Impala and drove off. Male# 1 said that the males looked like officers, but he was not sure, because there was no visible indication that they were officers (10 and 11 Board Review).

During an unverified phone statement, Male# 1said that when he drove by the incident location, he observed [\$87(2)(6)] lying on the ground and in the process of standing up. While [\$87(2)(6)] was standing up, a muscular male in plainclothes got into an unmarked Chevy Impala with no hubcaps and quickly drove away from the scene. Male# 1 said that he recognized the male as a police officer, because he appeared to be wearing a bullet proof vest underneath his shirt and has previously seen other undercover officers driving around his neighborhood in unmarked Chevy Impalas without hubcaps (12 Board Review).

Upon reviewing the second 911 call made by Male# 2, the caller said that he observed \$87(2)(b) "jumped" by three males who were acting aggressively. The male did not believe that the attackers were officers, because he observed no visible indication. The male believed that attackers were jacked and asked the dispatcher to send officers quickly (10 and 11 Board Review).

Upon reviewing the third 911 call made by Male# 2, the caller called back and asked the dispatcher whether any officers were coming to the incident location. Male# 2 told the dispatcher that he observed three males pull \$87(2)(6) out of her vehicle and then reach into her purse. The males then got into a dark grey vehicle and drove away. Male# 2 believed that \$87(2)(6) had been robbed. Male# 2 remained on the scene as officers arrived and told the dispatcher that \$27(2)(6) had needed EMS, because she said she was having a panic attack (10 and 11 Board Review).

Det. Vaccarino said that when he approached \$37(2)(b) driver's side, she was immediately irate and asked why she was being pulled over. Det. Vaccarino asked for \$87(2)(b) license and registration three times, but each time, \$87(2)(b) failed to comply and instead asked why she was being pulled over. Det. Vaccarino then instructed § 87(2)(b) to step out of her vehicle. reacted to this command by "lunging" toward her center console and sticking her right hand inside her purse. Det. Vaccarino responded by opening \$87(2)(b) door and grabbing her right arm. At the same time, Det. Reich ran around the vehicle and assisted Det. Vaccarino by arms. §87(2)(b) physically resisted by pulling away from the detectives and refusing to step out of her vehicle, however she never attempted to punch or kick the detectives. Det. Vaccarino and Det. Reich both pulled § 87(2)(b) out of her vehicle and then began to cry, but did not physically resist once in one of them handcuffed § 87(2)(b) handcuffs and was escorted behind her vehicle. Det. Vaccarino did not see \$87(2)(6) phone on her center console and §87(2)(b) never said that she was going to record the officers. Det. Vaccarino denied that he intentionally prevented §87(2)(b) from recording him and said that people record him all the time. \$87(2)(b) had no visible injuries and never complained of any injuries or requested medical attention either after the stop or when Det. Vaccarino and Det.

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Det. Reich said that from his position on the passenger side, he could not clearly hear the conversation between Det. Vaccarino and §87(2)(b) but heard Det. Vaccarino explain to § why she was stopped and \$87(2)(b) respond. After this conversation, \$87(2)(b) quickly placed both of her hands inside her purse that was on top of the center console. Det. Reich had not heard Det. Vaccarino ask to see \$87(2)(b) license and registration, but did not believe that she was reaching for those documents, because she reached into her purse with a sense of urgency. Det. Reich therefore believed that she was either reaching for a weapon to use against the detectives or reaching for contraband to hide. §87(2)(b) never said that she was reaching for her phone to record the incident. Det. Reich and Det. Vaccarino both responded to \$87(2)(6) action by instructing her repeatedly to show her hands and also to step out of her vehicle. refused to comply and yelled that she was not getting out of her vehicle. Det. Vaccarino then opened \$37(2)(b) door and grabbed one of her arms. Det. Reich ran around her vehicle and grabbed \$87(2)(b) other arm. \$87(2)(b) resisted by pulling away from the detectives and pulling her arms away to prevent being handcuffed. Eventually, the detectives were able to pull out of her vehicle and handcuff her. §87(2)(b) continued to yell, but did not physically resist once in handcuffs. §87(2)(b) never appeared to be injured, was never holding her wrist as if in pain, never complained of any injuries, and never requested medical attention either during the stop or when Det. Reich and Det. Vaccarino briefly returned to the scene to return § 87(2)(b) car keys (06 Board Review).

Reich briefly returned to the scene to return her car keys. § \$7(2)(5) never complained of any

force used against her (05 Board Review).

Sgt. Farella said that when he and Det. Fahmy responded to the scene, \$\frac{87(2)(b)}{2}\$ did not appear to be injured and was not holding her wrist in pain. Det. Vaccarino and Det. Reich informed Sgt. Farella that \$\frac{87(2)(b)}{2}\$ refused to comply with instructions to step out of her vehicle, so they had to handcuff her. \$\frac{87(2)(b)}{2}\$ was crying and extremely upset, because she said that she had child care issues and needed to get home, but never complained of any injuries, force used against her, and never requested medical attention. \$\frac{87(2)(b)}{2}\$ also never complained that either Det.

Vaccarino or Det. Reich intentionally interfered with her ability to record the incident.

Approximately 20-25 minutes after leaving the scene, Sgt. Farella received a call from a lieutenant with the 121 Precinct that there was a report of an assault in progress at location of the car stop. Sgt. Farella and Det. Fahmy returned to the scene, where they observed EMTs and two male bystanders interacting with \$\frac{87(2)(b)}{2}\$ Sgt. Farella interviewed \$\frac{87(2)(b)}{2}\$ again and at this point she complained of pain to her forearm and back from Det. Vaccarino and Det. Reich "tugging and tussling" with her during the handcuffing process. \$\frac{87(2)(b)}{2}\$ provided no further specifics. Sgt. Farella and Det. Fahmy followed \$\frac{87(2)(b)}{2}\$ ambulance to \$\frac{87(2)(b)}{2}\$ hospital where doctors x-rayed \$\frac{87(2)(b)}{2}\$ and diagnosed her with a mild sprain to her wrist (07 Board Review).

Det. Fahmy could not hear \$87(2)(b) conversation with Sgt. Farella when they first arrived on the scene. The rest of Det. Fahmy's account corroborated that of Sgt. Farella (08 Board Review).

P.G. 203-11 says that officers must use minimum necessary force (13 Board Review).

In <u>Police Department v. Lieutenant Mathew McNichol</u> the court found that an officer was justified in physically removing [887(2)(5)] from his vehicle and then pulling his arms

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behind his back to handcuff him after the individual failed to comply with multiple orders to step out of his vehicle (Disciplinary Case No. 78172/02) (14 Board Review). A FINEST message dated August 6, 2014, says that officers may not interfere with s ability to record a police encounter. However, individuals are not permitted to interfere with police operations and officers may take action if the individual interferes with an operation or officer safety (15 Board Review). Allegation G – Abuse of Authority: Det. Philip Vaccarino searched the vehicle in which was an occupant. Allegation H -Abuse of Authority: Det. Mathew Reich searched the vehicle in which was an occupant. said that Det. Vaccarino and Det. Reich searched the front seat, back seat, and trunk area of her vehicle. At times, Det. Vaccarino and Det. Reich appeared to be entirely inside her vehicle. During this search, Det. Vaccarino asked \$87(2)(6) "What are you going to do when I

Det. Vaccarino said that neither he nor Det. Reich made any searches of saze) vehicle until after Sgt. Farella and Det. Fahmy arrived on the scene. Once Sgt. Farella and Det. Fahmy arrived,

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Det. Vaccarino searched purse, which was still on top of the center console, and then searched the center console itself. Det. Vaccarino searched these areas, because this is towards where he observed "lunging," and also because she had placed the money she received in the earlier exchange on her right side. While searching the center console, Det. Vaccarino observed a bottle of vodka approximately one quarter full on the backseat floor. Det. Vaccarino opened the rear driver's side door and removed the bottle so that he could smell the contents and confirm that it was alcohol. Det. Vaccarino did not search any other compartments or areas of [37(2)(0)] vehicle. Det. Vaccarino was not sure if Det. Reich ever searched vehicle, but never observed him doing so. Det. Vaccarino denied that he or Det. Reich ever asked [37(2)(0)] "What are you going to do when I find a bag of weed?" or asked [37(2)(0)] any questions about narcotics in the vehicle (05 Board Review).

Det. Reich said that either he or Det. Vaccarino went into \$\(\frac{87(2)(b)}{2} \) driver's seat area to retrieve her ID from her purse, but he did not recall who performed this action. Det. Reich did not recall whether any other areas of \$\(\frac{87(2)(b)}{2} \) car were searched or if any compartments were opened. Det. Reich did not remember if any of \$\(\frac{87(2)(b)}{2} \) car doors, besides the driver's door, were opened. Neither Det. Reich nor Det. Vaccarino ever asked \$\(\frac{87(2)(b)}{2} \) "What are you going to do when I find a bag of weed?" Det. Reich never questioned \$\(\frac{87(2)(b)}{2} \) about narcotics in the vehicle, but did not remember whether Det. Vaccarino ever questioned her about narcotics inside the vehicle. Det. Vaccarino informed Det. Reich that he had found an open container of vodka inside the vehicle, "right next to \$\(\frac{87(2)(b)}{2} \) but did not specify where (06 Board Review).

Sgt. Farella said that he asked Det. Vaccarino and Det. Reich if they found any contraband during the incident and one of them told him that they found an open container of alcohol. Sgt. Farella did not recall whether the detective specified where the bottle was found. Sgt. Farella was not aware of any other contraband recovered during the incident. Sgt. Farella did not recall observing either Det. Vaccarino or Det. Reich going into safe(2)(1) vehicle while he was on the scene. Sgt. Farella did not recall observing Det. Vaccarino going into safe(2)(2) Mile's driver's seat to retrieve her ID from her purse. Sgt. Farella was not informed by either Det. Vaccarino or Det. Reich that they had performed any searches of safe(2)(3) vehicle. Safe(2)(5) never complained that either Det. Vaccarino or Det. Reich searched her vehicle (07 Board Review).

Det. Fahmy said when he and Sgt. Farella arrived on the scene, driver's door was open, but he did not recall whether any other doors were open. Det. Fahmy could not hear conversation with Sgt. Farella, but never heard her complain that either Det. Vaccarino or Det. Reich searched her vehicle. Det. Fahmy never observed Det. Vaccarino or Det. Reich go inside vehicle and never later learned that they performed any searches of the vehicle (08 Board Review).

Officers may conduct a limited protective sweep to check for weapons inside a vehicle after observing individuals engage in furtive movements (<u>People v. Washington</u> 3223, 738/06 A.D. 1d. (1st Dept. 2012)) (16 Board Review).

CPL Sub Section 1227 says that individuals are prohibited from possessing open containers of alcohol inside a vehicle (17 Board Review).

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§ 87(2)(b), § 87(2)(g)			
Squad: 3			
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Investigator			
Investigator:	Signature	Print	Date
G 17 1			
Squad Leader:	Title/Signature	Print	Date
	- 1000 2.5000000		2 4.0
Reviewer:	Title/Signature	Print	Date
	i inc/signature	FIIII	Date

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